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PATENT

OCT 17 2008 Application 10/666,227
Attorney Docket 2002P15657US01 (1009-040)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) Poerner, Colleen
Application 10/666,227
Confirmation 8462
Filed 18 September 2003
Application Title System and Method for Navigating an HMI
Art Unit 2178
Latest Examiner Termanini, Samir

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Commissioner for Patents
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant respectfully requests review of the final rejections presented in the present Office Action, which was mailed on 10 July 2008. No amendments are being filed with this Request. A Notice of Appeal accompanies this Request.

The Office Action erroneously rejected each of claims 1-40 under 35 U.S.C. 103(a) as being unpatentable over various combinations of U.S. Patent Application Publication 2003/0184580 ("Kodosky") and U.S. Patent 5,870,559 ("Leshem").

I. Claims 1-40

Each of independent claims 1 and 33, from one of which each of claims 2-32 and 35-39 ultimately depends, states, *inter alia*, yet no substantial evidence is presented that either the combination, or the applied portions of Kodosky, teach, "responsive to a detected collision between a parent node of said linked hierarchically organized plurality of HMI screen nodes and a first child node of a plurality of child nodes of said parent node, automatically recursively adjusting a position of said parent node until an adjusted position of said parent node does not create, with respect to each child node of said plurality of child nodes, a determined collision

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with said child node, said determined collision determined based upon said adjusted position of said parent node and a calculated position of said child node".

Independent claim 34 of the present application states, *inter alia*, yet no substantial evidence is presented that either the combination, or the applied portions of Kodosky, teach, "an HMI screen navigation editor operatively adapted to: responsive to a detected collision between a parent node of said linked hierarchically organized plurality of HMI screen nodes and a first child node of a plurality of child nodes of said parent node, automatically recursively adjust a position of said parent node until an adjusted position of said parent node does not create, with respect to each child node of said plurality of child nodes, a determined collision with said child node, said determined collision determined based upon said adjusted position of said parent node and a calculated position of said child node".

Independent claim 40 of the present application states, *inter alia*, yet no substantial evidence is presented that either the combination, or the applied portions of Kodosky, teach, "said HMI screen navigation editor adapted to, responsive to a detected collision between a parent node of said linked hierarchically organized plurality of HMI screen nodes and a child node of a plurality of child nodes of said parent node, automatically recursively adjust a position of said parent node until an adjusted position of said parent node does not create, with respect to each child node of said plurality of child nodes, a determined collision with said child node, said determined collision determined based upon said adjusted position of said parent node and a calculated position of said child node".

The Office Action asserts, at Page 5, that Kodosky at paragraph 185 teaches "responsive to a detected collision between a parent node of said linked hierarchically organized plurality of HMI screen nodes and a first child node of a plurality of child nodes of said parent node ('...The 'drag and drop' method may comprise the user selecting the first program icon with a pointing device (e.g., a mouse) and dragging the first program icon on the display to be on top of or proximate to the first device icon....,' para. [0185]) automatically adjusting a nodes position ('...The connections between device icons that are automatically displayed may be displayed with an appearance indicating the type of detected connection....,' para. [0016]).'"

On 31 October 2007, a Declaration under 37 C.F.R. § 1.132 of Colleen Guy (an inventor of record of the present application and one skilled in the art of industrial computer applications

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engineering as of 24 March 2000, the priority date claimed by the present application) was entered into the record. The present Office Action fails to accord Ms. Guy's Declaration ("the Declaration") the evidentiary weight to which that Declaration is entitled. The present Office Action merely asserts, "it [the Declaration] fails to provide outweighing objective evidence." This assertion is baseless since the present Office Action offers no evidence whatsoever regarding how one having ordinary skill in the art would interpret the claimed subject matter of each of claims 1-40 and whether one having ordinary skill in the art would find that claimed subject matter obvious in view of the applied portions of the relied upon references. The utter lack of evidence of the present Office Action cannot outweigh the evidence of the Declaration.

Paragraphs 27-39 of the Declaration evidence that one having ordinary skill in the art would not have found that the applied portions of Kodosky teach, "responsive to a detected collision between a parent node of said linked hierarchically organized plurality of HMI screen nodes and a first child node of a plurality of child nodes of said parent node, automatically recursively adjusting a position of said parent node until an adjusted position of said parent node does not create, with respect to each child node of said plurality of child nodes, a determined collision with said child node, said determined collision determined based upon said adjusted position of said parent node and a calculated position of said child node", as claimed by each of claims 1 and 33.

Paragraphs 28-40 of the Declaration evidence that one having ordinary skill in the art would not have found that the applied portions of Kodosky teach, "an HMI screen navigation editor operatively adapted to: responsive to a detected collision between a parent node of said linked hierarchically organized plurality of HMI screen nodes and a first child node of a plurality of child nodes of said parent node, automatically recursively adjust a position of said parent node until an adjusted position of said parent node does not create, with respect to each child node of said plurality of child nodes, a determined collision with said child node, said determined collision determined based upon said adjusted position of said parent node and a calculated position of said child node", as claimed by claim 34.

No evidence is of record that the remaining applied portions of the relied-upon references overcome at least these deficiencies of the combination of Kodosky and Leshem.

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Thus, the present Office Action presents no substantial evidence that the applied portions of the relied-upon references teach, "responsive to a detected collision between a parent node of said linked hierarchically organized plurality of HMI screen nodes and a first child node of a plurality of child nodes of said parent node, automatically recursively adjusting a position of said parent node until an adjusted position of said parent node does not create, with respect to each child node of said plurality of child nodes, a determined collision with said child node, said determined collision determined based upon said adjusted position of said parent node and a calculated position of said child node" as claimed in each of claims 1 and 33.

The present Office Action presents no substantial evidence that the applied portions of the relied-upon references teach, "an HMI screen navigation editor operatively adapted to: responsive to a detected collision between a parent node of said linked hierarchically organized plurality of HMI screen nodes and a first child node of a plurality of child nodes of said parent node, automatically recursively adjust a position of said parent node until an adjusted position of said parent node does not create, with respect to each child node of said plurality of child nodes, a determined collision with said child node, said determined collision determined based upon said adjusted position of said parent node and a calculated position of said child node" as claimed in claim 34.

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in combining or modifying the applied portions of the references relied upon in the Office Action (another assumption that is respectfully traversed), no substantial evidence has been presented the applied portions of the references relied upon in the Office Action, as **attempted to be modified and/or combined**, expressly or inherently teach every limitation of the independent claims, and consequently the Office Action fails to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested..

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CONCLUSION

It is respectfully submitted that the application as amended is in clear condition for allowance. Reconsideration, withdrawal of all grounds of rejection, and issuance of a Notice of Allowance are earnestly solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. 1.16 or 1.17 to Deposit Account No. 50-2504. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

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Date: 17 October 2008

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